

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Petition for Declaratory Ruling of the)	
Cellular Telecommunications &)	
Internet Association)	
_____)	

REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

Pursuant to section 1.2 of the Federal Communication Commission's (FCC or Commission) rules,¹ the FCC seeks comment on the Cellular Telecommunications & Internet Association's (CTIA) Petition for Declaratory Ruling (Petition).² The United States Telecom Association (USTA),³ through the undersigned and pursuant to FCC Rules 1.415 and 1.419,⁴ hereby provide its reply comments to the Petition.

DISCUSSION

I. Number Porting Interval

In its Petition, CTIA requests that the FCC address the time interval required for number porting between carriers.⁵ CTIA contends that commercial mobile radio services (CMRS) providers process number porting within one business day for wireless to wireless ports and that the length of time for wireline carrier number porting can be in some cases a week (as long as four

¹ 47 C.F.R. § 1.2.

² Telephone Number Portability, CC Docket No. 95-116, Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association, filed May 13, 2003 (Petition).

³ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

⁴ 47 C.F.R. §§ 1.415 and 1.419.

⁵ CTIA Petition at 7. "The porting interval is the amount of time it takes for two service providers to complete the process of porting a telephone number when a customer changes providers but keeps the same telephone number."

business days). CTIA seeks resolution from the FCC as to what constitutes a reasonable length of time for a carrier to port a number to another provider.

A. CTIA Cannot Change the Commission's Rules Via a Declaratory Ruling

USTA agrees with Verizon Communications, Inc. (Verizon) that the FCC cannot change the time interval in which local exchange carriers (LECs) port numbers in this proceeding.⁶ The time interval in which LECs are required to port numbers is “no earlier than three (3) business days after the firm order commitment receipt date received from the new service provider.”⁷ This determination was made based on the finding of the North American Numbering Council (NANC) Local Number Portability Administration Selection Working Group.⁸ The NANC determination was adopted by the FCC and is codified at section 52.26 of the Commission's rules.⁹ Since the porting interval for LECs is codified under the FCC's rules, the FCC cannot change regulations “through a declaratory ruling proceeding which is not conducted in conformance with APA rulemaking requirements.”¹⁰ Consequently, for the FCC to change the LEC porting interval, the FCC must institute a rulemaking proceeding.

B. Retention of the Current Porting Interval

Since 1997, wireline carriers have been porting numbers within three days after the firm order commitment (FOC) from the new service provider. Likewise, USTA believes that the porting interval should be three days after the FOC for new service for wireline to wireless and wireless to wireline. The FCC should maintain the current porting intervals “because these intervals were developed for application across the industry so that all carriers could operate under a consistent set

⁶ Comments of Verizon Communications, Inc. (Verizon) at 3.

⁷ Local Number Portability Administration Selection Working Group, Ex. E (LNPA Technical and Operational Requirements Task Force Report) at A1.

⁸ *Id.*

⁹ 47 CFR § 52.26.

¹⁰ Verizon at 4-5 (stating that “new rules that work substantive changes in prior regulations”-- such as CTIA's proposal to change the porting interval codified at 47 C.F.R. § 52.26(a) -- “are subject to the APA's procedures”; failure to follow these procedures requires a reviewing court to “vacate the

of guidelines and provide accurate and dependable number porting.”¹¹ We agree with SBC that wireless to wireless carriers should be allowed shorter porting intervals, but the shorter porting interval should not be imposed upon wireline carriers.

CTIA’s Petition fails to show that the porting interval will be a factor as to whether a customer switches service providers.¹² USTA agrees with the Wireless Consumer Alliance that the LEC porting interval “will not frustrate the FCC’s objectives in requiring number portability” and should not be a deterrent for customers.¹³ USTA believes that it is more important that the number be ported correctly to the customer. “[W]ireline carriers have facilitated millions of number ports to alternate service providers using the current industry standard for porting intervals.”¹⁴ Thus, the FCC should decide the porting interval dispute in a manner that retains the LEC porting interval, as it provides accurate and dependable number porting.¹⁵

C. A Shorter Porting Interval Will Require System Changes for LECs

LECs have designed their systems based on the three day porting interval. If the FCC were to shorten the porting interval for LECs, it would require LECs to reconfigure their networks at a substantial cost.¹⁶

USTA agrees with Qwest that “[i]f the current porting interval were changed to any material degree, carriers like Qwest – as well as wireline carriers nationwide – would be required to make significant changes to their Operational Support Systems and other systems, with the substantial concomitant costs that such changes would entail.”¹⁷ Changes would have to occur to LEC systems

rule, and remand the case to the Commission. *See Sprint Corp. v. FCC*, 315 F.3d 369, 374, 377 (D.C. Cir. 2003)).

¹¹ Comments of SBC at 9.

¹² *Id.* at 7.

¹³ Comments of the Wireless Consumer Alliance at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 9.

¹⁶ Comments of Verizon at 7; Qwest Corporation (Qwest) at 5; BellSouth Corporation (BellSouth) at 5; SBC Communications (SBC) at 8.

¹⁷ Qwest at 5.

“running through ordering and provisioning.”¹⁸ For instance, Verizon’s high-level estimates suggest that tens of thousands of programming hours would be required just to make changes of this sort, and the work would take many months to complete.¹⁹ The potential costs that LECs would incur could conceivably be in excess of \$100 million, depending on the size and scope of the LEC upgrades.²⁰ Thus, if the FCC were to shorten the porting interval, it must provide LECs a cost recovery mechanism to implement the needed changes.²¹

Moreover, needless additional costs would be incurred by LECs if the FCC were to adopt Sprint’s proposed reporting requirements.²² The need for reporting requirements for a service that LECs have provided since 1997 is unwarranted, and contrary to the deregulatory intentions of the Telecommunications Act of 1996. Sprint’s proposed reporting requirements do not further the implementation of number portability, but rather increase the cost and paperwork associated with implementing number portability for LECs.

D. Porting Interval and E911

CTIA contends that the “mixed service period”²³ may pose a threat to public safety by degrading the availability of E911.²⁴ A problem may occur when “a wireless phone is activated for service prior to the completed port activation by the NPAC, and the customer calls 911, a call back attempt by the PSAP would be routed through the old wireline switch to the fixed location, not to the wireless caller” and “if a call is placed from the wireline phone and the 911 operator attempts to

¹⁸ Comments of Verizon at 7.

¹⁹ *Id.*

²⁰ Verizon estimates that it will cost well over \$100 million dollars, while Qwest specified that it cost \$361,596,757 for it to initially implement number portability.

²¹ Comments of Verizon at 7; Qwest at 6; BellSouth at 5.

²² Comments of Sprint Corporation (Sprint) at 12.

²³ Comments of Verizon at 8 (defining that the “mixed services period” as when the customer’s telephone number is active in both the LEC and CMRS network).

²⁴ CTIA Petition at 11.

reestablish connectivity; the PSAP's call could be routed to the wireless phone instead of the wireline phone from which the emergency was reported.”²⁵

The threat to public safety during the “mixed services period” “would be caused by the CMRS provider's business decision and the CMRS provider can take steps on its own to ensure that no such ‘threat’ exists.”²⁶ USTA concurs with Verizon that: leaving the LEC porting interval in place for inter-modal portability should not alter the obligation to provide E911 service; CTIA's callback issue is “illusory” because until the port is completed, the customer will not be receiving any incoming calls; in some cases the FCC has recognized that call backs can not occur and that public safety is not threaten;²⁷ and the solution is to activate the ported number only when the port is completed.²⁸ Further, we concur with the Nebraska Public Service Commission that public safety is not jeopardized during the “mixed services period” when a number is ported within the established FCC and NANC guidelines.

II. Number Porting Requires An Agreement

CTIA seeks resolution from the FCC as to what type of an agreement is necessary between CMRS providers and LECs in order to port numbers. CTIA proposes the “Service Level Porting Agreement” as the appropriate agreement for a wireline carrier to port to a wireless provider.

USTA believes that the FCC “may not limit a LEC's ability to negotiate an interconnection agreement to accommodate number portability with a wireless provider.”²⁹ Incumbent LECs must have the ability to negotiate an interconnection agreement pursuant to section 251 and 252 of the Act.³⁰ An interconnection agreement ensures that proper routing, call completion, and service quality standards are sustained.

²⁵ *Id.*, see also comments of Verizon at 8.

²⁶ Comments of Verizon at 8.

²⁷ *Id.* at 9 (stating “as in the case of mobile units that are not associated with a dialable number or are used in origination-only rate plans”).

²⁸ *Id.* at 8-9.

²⁹ Comments of BellSouth at 9.

³⁰ 47 U.S.C. §§ 251 and 252.

BellSouth proposes a compromise that allows the affected carriers to determine the type of agreement that best suits their needs, whether it is an interconnection agreement or another type of agreement.³¹ USTA concurs with BellSouth, with the caveat that the incumbent LEC should be given the absolute right to elect to use an interconnection agreement or incorporate the number porting arrangement into an existing interconnection agreement. By allowing an incumbent LEC to select the use of an interconnection agreement, the FCC will continue to ensure that proper routing, call completion, and service quality standards are sustained.

III. The Intercarrier Dispute Between BellSouth and Sprint

CTIA seeks resolution in this proceeding to the rating and routing issues filed by Sprint in its Petition for Declaratory Ruling (Sprint Petition). CTIA, however, concedes that “the dispute between Sprint and BellSouth largely concerns matters of intercarrier compensation, not numbering administration or number portability.” USTA concurs with BellSouth that the FCC need not resolve the Sprint Petition in this proceeding, as the issues concern intercarrier compensation.³² Consequently, the FCC should address the Sprint Petition in the Commission’s *Developing A Unified Intercarrier Compensation Regime* proceeding.

IV. The Bona Fide Request Issue

On June 18, 2003, the FCC issued its Fourth Report and Order in CC Docket No. 99-200 and CC Docket No. 95-116 (Order), and Fourth Further Notice of Proposed Rulemaking CC Docket No. 99-200 in the LNP proceeding.³³ In the Order, the FCC clarified the “scope of the LNP mandate” that CTIA requested. Thus, there is no further need to address this issue in the context of this proceeding. Interested parties will evaluate and respond accordingly to the FCC’s Order in the LNP proceeding.

³¹ Comments of BellSouth at 11.

³² Comments of BellSouth at 12.

³³ *Numbering Resource Optimization*, CC Docket Nos. 99-200 and 95-116, Fourth Report and Order in CC Docket 99-200, and Fourth Notice of Proposed Rulemaking in CC Docket 99-200, FCC 03-126 (June 18, 2003).

CONCLUSION

For the reasons set forth above, USTA urges the FCC to rule consistent with the arguments presented herein.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION
Lawrence E. Sarjeant
Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 2005
(202) 326 -7300

June 24, 2003

